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Mr. Shipman



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195160

DATE: February 21, 1980

MATTER OF: Astro International Freight
Forwarders, Inc.

DIGEST:

1. Successor corporation with substantially same officers, same owner and same address as predecessor corporation may be held responsible for debt of predecessor corporation, and for contract of owner or manager to pay the debt.
2. New acknowledgment or promise removes bar of statute of limitations and deduction action taken by GSA on new promise under Government's common law right of set off has not been shown to be barred. United States v. Munsey Trust Co., 332 U.S. 234, 239 (1947).

Astro International Freight Forwarders, Inc. (International) requests review of action taken by the General Services Administration (GSA) in which about \$80,000 was deducted from other monies due the carrier to satisfy debts owed the Government by Astro Van Pak, Inc. (Van Pak). See 49 U.S.C. 66(b) (1976) and 4 C.F.R. 53 (1978).

GSA reports that Van Pak was indebted to the United States for \$80,692.84 in overcharges for transportation furnished the Government during the years 1973, 1974 and 1975. Van Pak did not respond to requests for refund of the overpayments and ceased operations in December 1975. Deduction action was then initiated against International alleged by GSA to be a subsidiary of Van Pak.

In September 1977 the deduction action was stopped to investigate allegations by International that it was a separate corporation and not responsible for the debts of Van Pak. At meetings with GSA, Jerry H. Sills, who started Van Pak in 1965, accepted liability for the debts of Van Pak and orally agreed to submit a written proposal for orderly repayment. However, Mr. Sills failed to submit a written proposal for satisfaction of the debt and on July 31, 1978, GSA reported the debt to the

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Department of Justice for collection. In the referral GSA recommended court action to effect collection and enclosed a suggested complaint and indicated that details of the indebtedness would be furnished upon a determination of appropriate court action. Rather than resorting to litigation to effect collection of the debt, the United States Attorney, Eastern District of Virginia, in a letter of November 13, 1978, advised GSA that it should "withhold any funds which you owe to the successor, Astro International Freight Forwarder, Inc."

In the request for review International again alleges that International and Van Pak are unrelated corporations and that, ". . . the vast proportion of the monies seized between December 26, 1978 and January 24, 1979, was for transactions on which collection was barred by the statute of limitations."

Although International alleges that International and Van Pak are unrelated corporations, no evidence has been presented by International in support of this allegation. In fact the evidence supports the contrary conclusion.

A report from Dun and Bradstreet shows James Kennedy Sills to be the Chief Executive and Chairman of the Board of Van Pak. The business was started in 1965 by Jerry H. Sills, brother of James Kennedy Sills. An annual report of Van Pak, dated March 21, 1978, to the Virginia State Corporation Commission lists V. B. Runfola, President, J. K. Sills, Vice-President, and D. M. McNaughton as Secretary-Treasurer of Van Pak.

International was incorporated in Virginia on June 27, 1974, and was operated as a subsidiary of Van Pak until the latter ceased operating. An annual report of International, dated March 1, 1978, to the Virginia State Corporation Commission lists the same officers and directors as are named for Van Pak, omitting only J. K. Sills. GSA reports that documents on file with the Interstate Commerce Commission, the Military Traffic Management Command, and the Commonwealth of Virginia show James K. Sills as owner of both Van Pak and International. The annual reports also show the same addressee, Philip F. Hudoch, and address for both Van Pak and International.

Under somewhat similar circumstances the United States Court of Appeals for the 4th Circuit pierced the

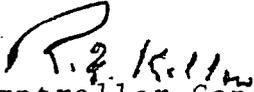
corporate veil and held a transferee corporation, Astro Van Lines, Inc., and Jerry H. Sills, personally, liable for the debts of the transferor corporation, U.S. Van Lines, Inc. National Carloading Corporation v. Astro Van Lines, 593 F.2d 559 (1979). On the basis of the facts presented in the present record and the past history of business relations and dealings among Jerry H. Sills, James K. Sills, U.S. Van Lines, Inc., Astro and International, we believe that the dealings of the several parties are interrelated and the obligations interchangeable. Therefore, funds due International were properly setoff for the debts of Astro.

The statute of limitations upon which claimant relies is not identified. However, section 322 of the Transportation Act of 1940, 54 Stat. 955, as amended, Pub. L. 85-762, 25 Stat. 860, Pub. L. 92-550, 86 Stat. 1163, Pub. L. 93-604, 88 Stat. 1960 (formerly 49 U.S.C. 66 (1976 Ed.)) provides, in pertinent part, that payment for transportation of property for the United States is to be made on presentation of the bill by the carrier, but to protect the interests of the United States, the right is reserved to deduct the amount of any overcharge determined on audit of the bill from any amount subsequently due to the carrier. Such deduction is required by the statute to be made within three years from the time of payment of bills.

The deduction action of which claimant complains was taken to recover overcharges incurred for numerous shipments transported between March 1973 and October 1977. The earliest, therefore, was transported nearly six years prior to the setoff, while the most recent shipments were transported less than one and a half years prior to the setoff. However, on January 25 and February 1, 1978, Jerry H. Sills, former owner and manager of Van Pak and, at that time, manager of International, at meetings with GSA, acknowledged the indebtedness and promised payment. Such a new promise removes the bar of the statute of limitations. See, 54 C.J.S. Limitation of Actions § 302 et seq., and 51 Am. Jur.2d, Limitation of Actions § 319 et seq. The setoff action was then taken by GSA on the new promise under the Government's common law right. See United States v. Munsey Trust Co., 332 U.S. 234, 239 (1947). This action has not been shown to be barred. And it has long been the rule that the Government accounting

and administrative officers should reject or disallow all claims as to which they believe there may be a substantial defense in law or as to the validity of which they are in doubt. See Longwill v. United States, 17 Ct. Cl. 288, 291 (1882); Charles v. United States, 19 Ct. Cl. 316, 319 (1884).

Accordingly, the audit action of GSA is sustained.


Deputy Comptroller General
of the United States